

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

On appeal counsel contends that appellant has submitted probative evidence such that his claim should be allowed. He also contends that appellant was “getting whipsawed between [appellant’s] two claims.”

### **FACTUAL HISTORY**

On June 3, 2016 appellant, then a 53-year-old electronic technician, filed an occupational disease claim (Form CA-2) alleging that he suffered pain in his right wrist, forearm, and elbow as a result of the duties of his federal employment. He noted that he first became aware of the disease on July 17, 2000 and first became aware of its relationship to his employment on July 30, 2014. On the claim form, appellant explained his delay in filing the claim as “I thought the original claim was still in effect.”<sup>3</sup>

In an October 12, 2015 progress note, Dr. Harry A. Hoyen, a Board-certified orthopedic surgeon specializing in hand surgery, diagnosed pseudofolliculitis, open fracture of proximal radius, ulnar nerve lesion, carpal tunnel syndrome, scar and fibrosis of skin, alopecia areata, and pain in limb. On the same date, he reviewed an x-ray of the right forearm and wrist and found mild residual deformity of the distal radial and ulnar shaft-metadiaphysis due to remote, well-healed fractures. Dr. Hoyen also noted mild osteopenia.

In an October 12, 2015 progress note, Dr. Michael W. Keith, a Board-certified orthopedic surgeon specializing in hand surgery, noted that appellant had been his patient for 15 years. He noted that he reconstructed appellant’s forearm many years ago. Dr. Keith noted that appellant made it through at work despite some deformity and issues with his wrist, but that it was now becoming a bit excessive and that he was considering a change in position due to the level of function and the repetitive nature of his job.

In an October 16, 2015 note, Dr. David R. Crowe, a Board-certified dermatologist, noted that he saw and evaluated appellant on that day.

In a December 28, 2015 progress report, Dr. Hoyen noted a follow-up and listed numerous problems, including pain in limb, ulnar nerve lesion, carpal tunnel syndrome, pseudofolliculitis, and resolved open fracture of the proximal radius. He noted that the majority of appellant’s symptoms were over the dorsal aspect of the wrist, and were worse with activity, especially the repetitive nature of his work. Dr. Hoyen recommended a functional capacity evaluation to help guide him in reaching a conclusion concerning appellant’s restrictions.

In a March 1, 2016 statement, appellant indicated that he had experienced soreness in his right forearm, wrist, and elbow, as well as a popping sensation since the middle to latter part of 2014. He noted that the pain in his elbow had been present since the latter part of January 2016,

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<sup>3</sup> Appellant had previously filed a claim wherein he alleged that on July 17, 2000 he got his right arm caught between the roller and conveyer frame of a belt. This claim was assigned File No. xxxxxx543. OWCP accepted his traumatic injury claim for open fracture of the right radius, open reduction right radius/ulna, fasciotomy of the right volar compartment, and keloid scarring right forearm. Appellant stopped work on the date of injury and returned to limited-duty work on June 22, 2001. He was off work again on July 15 and 16, 2002. OWCP found that appellant had 23 percent permanent impairment of the right arm and paid a schedule award for the period November 5, 2003 to April 27, 2004.

and the itching had been present for over five years. Appellant contended that the present symptoms coincided with the exact area that was involved in the accepted employment injury and the same area where multiple surgeries had been performed, and that he therefore believed that the accepted employment injury was directly related to his present symptoms. He contended that, as a result of his arm being pulled into a conveyer belt up to his elbow, the tendons and ligaments in that area were weakened and this was responsible for his present symptoms. Appellant contended that he had a loss of strength in his right arm which made performing his job difficult. He described the duties of his work, which included the frequent use of hand tools in order to loosen screws, bolts, and nuts, and using extreme force to pull new belts over rollers. Appellant contended that he was not totally disabled from all work, but that there were certain tasks that should be eliminated from his job duties.

By letter dated June 13, 2016, OWCP informed appellant that further information was necessary to support his claim. Appellant was afforded 30 days to submit the necessary evidence.

By letter dated July 5, 2016, the employing establishment controverted the claim based on causal relationship and timeliness. In a separate letter of the same date, the human resources specialist for the employing establishment noted that the medical documentation provided a diagnosis of pseudofolliculitis, but did not provide medical rationale explaining how this illness was causally related to appellant's employment. She argued that findings of pain absent explanatory medical evidence supporting how and why the underlying medical conditions were caused by or affected by work activities is insufficient to establish fact of injury.

In a February 6, 2016 note, Dr. Peter J. Greco, an internist, indicated that he treated appellant and had provided stretching exercises for him.

In an April 8, 2016 letter to appellant, in File No. xxxxxx543, OWCP noted that he was now claiming a need for additional medical care due to the July 17, 2000 work-related injury, but that, according to the evidence received, he was claiming a new injury and should therefore file a new claim for an occupational disease.

By decision dated August 31, 2016, OWCP denied appellant's claim. It determined that he had timely filed his claim, but found that he had not submitted information sufficient to establish that the employment events occurred as alleged. OWCP also noted that appellant had not established a diagnosed medical condition causally related to an alleged employment event.

By letter received by OWCP on December 2, 2016, appellant, through counsel, requested reconsideration. Counsel resubmitted the October 12, 2015 report from Dr. Keith.

In a January 27, 2017 internal memorandum, OWCP recommended doubling this case with File No. xxxxxx543 for case management purposes. It noted that there was pertinent evidence in File No. xxxxxx543 that had not been considered.

By decision dated March 1, 2017, OWCP determined that the evidence was sufficient to modify the August 31, 2016 decision. It determined that the evidence supporting the factual component of the fact of injury for appellant's occupational disease claim was submitted under File No. xxxxxx543. After reviewing this evidence, OWCP determined that, although the

evidence was sufficient to support the factual component of fact of injury, the claim remained denied because the evidence of record failed to establish a causal relationship between appellant's work exposure and a diagnosed medical condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence must include a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### **ANALYSIS**

In File No. xxxxxx543, OWCP accepted that on July 17, 2000 appellant sustained an employment-related fracture of the right radius, open reduction right radius/ulna, fasciotomy of the right volar compartment, and keloid scarring of the right forearm. It issued a schedule award for 23 percent impairment of the right arm. That case remains open for medical benefits. In the instant case, appellant filed a claim for pain in his right wrist, forearm, and elbow as a result of the duties of his employment. OWCP accepted that he filed a timely occupational disease claim and that he experienced the employment factors alleged, but denied his case as he failed to establish a causal relationship between his work exposure and a diagnosed medical condition.

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<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Irene St. John*, 50 ECAB 521 (1999).

<sup>6</sup> *Id.*

The Board finds that appellant failed to establish his occupational disease claim as the medical evidence of record does not establish a causal relationship between the accepted employment factors and a medical diagnosis.

Dr. Hoyen noted diagnoses of mild osteopenia and pseudofolliculitis, ulnar nerve lesion, carpal tunnel syndrome, as well as appellant's prior fracture of the proximal radius. Although he noted that appellant's symptoms were made worse with the repetitive nature of his employment, he did not provide a well-rationalized explanation on causal relationship. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure resulted in a diagnosed condition is insufficient to meet appellant's burden of proof.<sup>7</sup>

Dr. Keith discussed his treatment and noted that he had reconstructed appellant's forearm many years ago. He noted that appellant was considering a change in position, and he did note the repetitive nature of appellant's job, but he never provided a clear conclusion with regard to causal relationship supported by rationalized medical opinion. Dr. Keith's report is therefore of limited probative value as it failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim.<sup>8</sup>

Dr. Crowe merely indicated in his report that he agreed with an undated, unspecified medical report, while Dr. Greco indicated that he gave appellant stretching exercises. Neither provided any explanation with regard to a medical diagnosis caused by appellant's employment. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>10</sup> Appellant's belief that the duties of his federal employment caused his injury is not in question, but that belief, however, sincerely held, does not constitute medical evidence sufficient to establish causal relationship.<sup>11</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish an occupational disease causally related to the accepted factors of his federal employment.

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<sup>7</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>8</sup> *See P.P.*, Docket No. 17-0483 (issued June 13, 2017).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>11</sup> *P.S.*, Docket No. 17-0598 (issued June 23, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 1, 2017 is affirmed.

Issued: September 21, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board